

**MINUTES**  
**RULES COMMITTEE MEETING**  
**COMMISSION FOR MH/DD/SAS**  
**4011 Carya Drive**  
**Wake Commons Building**

**Wednesday, May 5, 2004**

**Attending:**

**Commission/Committee Members:** Floyd McCullouch, Chair, Dorothy Crawford, Tom Ryba, Mazie Fleetwood, Martha Martinat, Ann Suggs, Pearl Finch, Fredrica Stell

**Ex-Officio Members:** Bob Hedrick for Mike Mayer, Sally Cameron

**Excused:** Emily Moore, Albert Fisher, George Jones, Pender McElroy, William Sims, Lois Batton, Anna Scheyett

**Others:** Peggy Balak, Cindy Kornegay, Susan Collins, Johnny Womble and Flo Stein (DMH/DD/SAS staff); Stephanie Alexander (DFS staff); Sam Stell (visitor, Columbus County); Donald Dolinger (Charlotte-Meck Police); Rob Newman (Raleigh Police); C.T. Barnett (Raleigh Police); Sgt. E.L. Presnell (Greensboro Police); R.O. Rogers (U.S. P.C.A.); Jennifer Pickett (Victory K-9 Training, Inc.); Janet Schanzenbach (Council on Community Programs); Diane Pomper (A.G. Office); Ken Earnhardt (GACPD/PAIMI); Cynthia Temoshenko (GACPD); Sammy King (LIFE, Inc.); John L. Crawford (visitor, Macon County)

**Handouts:** Agenda; March 17, 2004 Minutes; Proposed Rules Language – Dog Handler Rules; Session Law 2003-398; 10A NCAC 26E .0100 Registration of Manufacturers: Distributors: and Dispensers of Controlled Substances; Title XXXV – Waiver Authority for Physicians who Dispense or Prescribe Certain Narcotic Drugs for Maintenance Treatment or Detoxification Treatment

**Welcome, Introductions and Approval of Minutes**

Chair Floyd McCullouch called the meeting to order at 9:40 a.m.

A moment of silence was requested for our soldiers.

All members, staff and visitors made introductions.

Mazie Fleetwood made a motion to approve the Minutes from the March 17, 2004 meeting with correction, changing “few” to “some” on page 2, paragraph 3. Dorothy Crawford seconded the motion and it passed unanimously.

## **Dog Handler Rules**

Cindy Kornegay explained the two packets relating to the Dog Handler Rules and the reason for the amendments and adoptions of these proposed rules. Session Law 2003-398 (H860) authorizes the Commission for MH/DD/SAS to adopt rules relating to the acquisition, possession and security of controlled substances by persons registered under the provisions of G.S. 90-102.1. The legislation also authorizes the DHHS to adopt rules relating to the training and qualifications for dog handlers and the certification of drug detection dogs subject to the provisions of G.S. 90-102.1.

Ms. Kornegay stated that the Division is requesting a favorable report from the Rules Committee to take to the full Commission on May 11 in order to publish the proposed text of the rules. The publication of text initiates the required 60-day comment period.

Ms. Kornegay introduced Johnny Womble to explain the Dog Handler Rules.

Johnny Womble walked the Committee through the changes in the Rules (10A NCAC 26E .0102; .0104; .0105; .0111 and .0113). He explained these Rules are Commission rules and must be approved by the Commission to publish text.

The rules as presented raised several concerns, including:

- procedures for obtaining narcotics;
- the availability of drug detection dogs currently;
- how dogs are trained for law enforcement;
- the availability of law enforcement to provide drug detection services;
- the average lifetime use of dogs;
- how to keep dogs from getting sold to the wrong people;
- the cost of training a dog, and its dog handler.

A number of individuals representing law enforcement spoke about their concerns with the legislation. The overriding concern expressed was with the legislation itself. Several of the law enforcement representatives stated they are not supportive of the concept of non-law enforcement dog handlers. It was stated there are law enforcement drug detection dogs available to the public statewide at little or no charge and questions were raised about why anyone would be willing to pay for the service from a non-law enforcement drug detection business. Other concerns included chain of custody issues with drugs found and whether the district attorneys would prosecute these cases.

Mr. Womble also walked the members through the changes proposed for the Secretary Rules (10A NCAC 26E .0106 and .0107).

Concerns were expressed by law enforcement personnel including: the initial training for handlers does not mirror current requirements for law enforcement dog handlers; the length of the certification period; search and seizure issues; and the criteria used to certify the canine associations.

Division staff recommended that the Rules Committee support the publication of the proposed rule language in the N.C. Register so that the public comment period could officially begin. The Rules Committee passed a motion to recommend that the full Commission approve publication of the proposed rule language. The Rule Committee made this recommendation without a favorable report on the content of the proposed rule language. The officers were invited back by Mr. McCulloch to make comments at the May 11 Commission meeting.

Mr. McCullough announced that Senator John Kerr will attend the May 11 Commission meeting.

Martha Martinat recommended we have an SBI or law enforcement officer on the Commission as representation. Division staff reported that one of the two remaining Commission vacancies must be an individual knowledgeable and experienced in the field of controlled substances regulation and enforcement. This appointee is selected from recommendations made by the Attorney General.

A motion was made and passed to ask the Commission Chair to write a letter requesting that this appointment be made as expeditiously as possible.

#### **Follow-Up from April 14 Commission Meeting on “Definition of Independent Practitioner” (Controlled Substances Rules – 10A NCAC 26E, Section .0100)**

At the request of the Commission, Division staff presented follow-up material concerning the definition of independent practitioner and whether there is a need for further rule change. The definition in 10A NCAC 26E .0102 covers all of the categories of independent practitioners included in the exemption from registration of manufacturers, distributors and dispensers of controlled substances. The additional language that was added to 10A NCAC 26E .0108 removes physicians that engage in office-based opioid treatment from the exempted list. The required registration is in line with federal statutes. Staff recommended no further rule changes and the Rules Committee concurred.

#### **Report/Update on Status of the LME/Provider Rules and Development of Faith-Based Treatment Licensure Rules**

Division staff recommended that the effective date of the LME/Provider rules be delayed from July 1 to October 1, 2004. The primary reason for the delay is due to changes in the timeline for implementation of the new service definitions. A number of comments have been received and staff recommended that a Rules Committee meeting be held in July to consider the comments received. A tentative schedule has been developed for the Commission’s consideration and approval.

Division staff reported on the status of development of licensure rules for faith-based treatment programs. There has been federal legislation passed that eliminates the need to move forward with rule development. Staff recommended no rule changes at this time and the Rules Committee concurred.

### **New Business**

Ms. Crawford would like to invite the Commission members to visit the substance abuse crisis unit for adults in Haywood County, when they meet in August. Mr. McCullough suggested this be presented at the May 11 Commission meeting.

Ms. Martinat thanked the staff for all their hard work.

The meeting adjourned at 12:30 p.m.